Filed 6/1/07 Laufer v. City Morro Bay CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JOHN LAUFFER et al.,

Plaintiffs and Appellants,

v.

CITY OF MORRO BAY,

Defendant and Respondent.

2d Civil No. B191569
(Super. Ct. No. CV 040642)
(San Luis Obispo County)

Appellants, John Lauffer, Kerrigan Mahan, Melanie Williams-Mahan and Steve Stevens, own homes in the Cloisters housing development in Morro Bay. They are subject to a special assessment for maintenance of a park, open space, medians and parkways in the subdivision. They contend they do not receive special benefits from the assessments beyond those enjoyed by the general public. In a complaint for injunctive and declaratory relief, appellants challenged the 2004/2005 assessment as improper under the Landscaping and Lighting Act of 1972 (the Act) (Sts. & Hy. Code, § 22500 et seq.)[1] and Article XIII D of the California Constitution (added by Initiative Measure Prop. 218, § 4, approved Nov. 5, 1996).

[1] All statutory references are to this code unless otherwise stated.

We affirm judgment entered against appellants after denial of their motion for writ of administrative mandamus. The special assessment is valid under the Act. It is also not subject to the procedure and approval processes of Section XIII D, as appellants now concede.

FACTS

In 1996, at the request of property owners, the City of Morro Bay established a special assessment district to cover costs to maintain park and open space areas in a planned housing development. The development was to be located within 50 acres of previously undeveloped beach front property - "the Cloisters." Negotiated conditions of approval required the owner to dedicate 34 acres of open space and a park to the City. The owner agreed to the special assessment district. The City estimated that maintenance of the improvements would cost $148,944 annually, or $1,241.20 per parcel. Each year since the development has been completed, the City has assessed the same amount. It is apportioned equally among the property owners. The assessment has never been increased or modified.

The original owners consented to establishment of the district. The subdivision agreement provides, "Owner/Developer hereby irrevocably consents to formation of said assessment district, and waives any right to withdraw from or protest the formation of said district." Appellant buyers purchased their properties from the original owners with the express understanding that these parcels were subject to the special assessment district.

PROCEDURAL HISTORY

Following levy of the assessment for the 2004/2005 year, appellants filed this action. In February of 2006 the trial court denied appellants' motion for writ of mandate, and on April 6, 2006, entered judgment against appellants. Within 60 days, appellants filed this notice of appeal.

ANALYSIS

Motion to Dismiss Appeal as Untimely

We first reject respondent's contention that this is a validation action subject to a 30 day time limitation for notice of appeal from judgment. (Code Civ. Proc., § 870.) Sections 860 through 870 of the Code of Civil Procedure provide special procedures for counties, cities and agencies to establish validity of their bonds and assessments in a "validation proceeding." Interested private parties may bring a "reverse validation action." (*California Commerce Casino v. Schwarzenegger, Inc.* (2007) 146 Cal.App.4th 1406, 1420, fn. 12; Code Civ. Proc., § 863.) The provisions of sections 860 through 870 are exclusive. (Code Civ. Proc., § 869.) A resulting judgment is final after 30 days unless notice of appeal is filed. (*Id.* § 870.)

Where the essential object of a proceeding is the declaration that an assessment district is without legal existence, it is a validation action within the exclusive provisions of sections 860 through 870 of the Code of Civil Procedure. (*Not About Water Com. v. Board of Supervisors* (2002) 95 Cal.App.4th 982, 993; *Dawson v. Town of Los Altos Hills* (1976) 16 Cal.3d 676, 682.) "[L]egal challenges to the formation of local public improvement districts must be heard in a single exclusive form of action, the validation proceeding." (*Not About Water Com.*, at p. 986.)

Here, appellants do not challenge the legal existence of the district. The essential object of appellant's action is to set aside the 2004 annual assessment, made years after formation of the district, and to direct the City to use particular procedures to arrive at future assessments.[2]

In the trial court, respondent did not characterize this as a validation action. In its answer to the complaint, respondent took the position that "A Code of Civil Procedure section 1094.5 writ of administrative mandamus is the proper and exclusive means for this Court to review the propriety of the City's actions as alleged." We agree.

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[2] Appellants abandoned their prayer for a refund of "improperly collected assessment[s] for the past three years."

Appellants met the 60 day deadline for filing notice of appeal from the judgment entered after denial of a petition for administrative mandamus. (Cal. Rules of Court, rule 8.104.)

Special Assessment Pursuant to the Landscaping and Lighting Act of 1972

A local government may fund an improvement by imposing a special assessment upon owners of particular parcels of land who receive special benefits from the improvement. A special assessment must be proportional to the special benefits derived, beyond those enjoyed by the public generally. (*Knox v. City of Orland* (1992) 4 Cal.4th 132, 142.) A legitimate special assessment is not subject to the two-thirds voter approval requirements for special taxes. (Cal. Const. Art. XIII A, § 4, added by Initiative Measure Prop. 13, approved June 6, 1978; *Knox*, at p. 141.)

The Act (§ 22500 et seq.) authorizes special assessments for the purpose of maintaining and servicing parks, and acquiring open spaces. (§ 22525, subds. (e), (f) & (f).) Notice, report and hearing procedures must be followed to form a valid assessment district. (§§ 22585 - 22594.) Appellants do not challenge compliance with these formation procedures.

Once the district is formed, each annual assessment under the Act requires an engineer's report and a noticed public hearing. (§§ 22620 - 22631.) The City complied with both requirements in 2004, as it had each year previously. At a public hearing, the city council passed a resolution directing preparation of the engineer's report. The engineer's report identifies specific maintenance tasks and associated costs. It recommends equal apportionment among parcels. A staff report noted that actual costs were expected to exceed the estimates, but advised that an increased assessment would require approval of the parcel owners by vote. At a public hearing, the city council received public comment on the report, and adopted a resolution declaring its intent to levy the annual assessment without increase.

Standards of Review

When reviewing a trial court's denial of a petition for writ of mandamus, we review questions of law de novo. (*Fry v. Saenz* (2002) 98 Cal.App.4th 256, 262.) The

trial court's factual findings are reviewed under the substantial evidence standard. (*Silver v. Los Angeles County Metropolitan Transportation Authority* (2000) 79 Cal.App.4th 338, 347.)

Because a special assessment is a legislative act, our review of the City Council's resolution declaring its intent to levy the assessment is narrowly circumscribed. (*Dawson v. Town of Los Altos Hills, supra*, 16 Cal.3d at p. 685.)[3] Under the Act, the party challenging a city's determination to levy an assessment has the burden of proving that the city engaged in fraud or prejudicial abuse of discretion. (§ 22509.)[4]

Compliance with the Act

The Act does not expressly require annual recalculation of the assessment. (§ 22572.) It does require annual apportionment between assessed parcels, but that apportionment may be made by "any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements." (§ 22573.) Substantial evidence supports a finding here that equal apportionment among the parcel owners was fair.

In *Knox v. City of Orland, supra,* 4 Cal.4th 132, equal apportionment of park maintenance costs among parcel owners was fair, notwithstanding public park use. The record contained "no evidence contradicting the city's benefit determination, and no

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[3] "A special assessment finally confirmed by a local legislative body in accordance with applicable law will not be set aside by the courts unless it clearly appears on the face of the record before that body, or from facts which may be judicially noticed, that the assessment as finally confirmed is not proportional to the benefits to be bestowed on the properties to be assessed or that no benefits will accrue to such properties." (*Dawson v. Town of Los Altos Hills, supra,* 16 Cal.3d at p. 685.)

[4] "Any proceedings taken under this part and any assessment levied pursuant thereto shall not be invalidated for failure to comply with the provisions of this part if such failure does not substantially and adversely affect the rights of any person. All determinations made by the legislative body pursuant to this part shall be final and conclusive in the absence of fraud or prejudicial abuse of discretion." (§ 22509.)

facts that otherwise tend[ed] to show nonproportionality or absence of benefit to the assessed properties." (*Id.* at p. 148.) As in *Knox*, "we cannot say from the record that the assessed properties will receive no special benefit from the improvements here in question. While . . . the community at large benefits by the presence of five parks in the area, the residential property owners are uniquely benefited by the proximity of these facilities to their properties." (*Id.* at pp. 148-149.) A map demonstrates the special proximity to the open spaces enjoyed by each parcel owner. In *Knox* the city obtained a park use study, while here the City of Morro Bay did not. However, the city in *Knox* was conducting an initial determination whether to form a special assessment district over objection of twenty homeowners. (*Id.* at p. 137.) Here, the assessment district was formed and apportioned in 1996 at the request of the original owners without objection. Appellants have not met their burden of demonstrating prejudicial abuse of discretion or fraud.

Respondent Was Not Obligated To Find An Alternative Funding Source

Nothing in the record supports appellants further contention that the city was required to find an alternate funding mechanism for maintenance. The subdivision and improvement agreement with the City of Morro Bay required the owner/developer to initiate proceedings for formation of the assessment district. It also provided that "In the event that formation of the assessment district fails to be established or approved, OWNER/DEVELOPER will be required to form a Homeowner's Association for maintenance of the improvements." An alternative maintenance mechanism was unnecessary because the assessment district was established and approved.

Documents disclosing the assessment district to buyers also allowed for the possibility that another entity could assume maintenance responsibility in the future: "Buyer is aware that prior to the recordation of the final map, the Seller shall form a property maintenance assessment district . . . which shall provide for assessments to maintain public parks . . . . This requirement shall be modified when an entity acceptable to the City assumes ownership maintenance responsibility for a particular area or

improvement." The conditions of approval contain the same language. In correspondence with the city, the owner/developer's counsel expressed the view that sometime in the future "some alternate financing may be appropriate to consider." None of these documents impose upon the city a duty to find an alternative funding mechanism.

The judgment is affirmed. Costs on appeal awarded to respondent.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

GILBERT, P.J.

PERREN, J.

Douglas Hilton, Judge

Superior Court County of San Luis Obispo

Belsher & Becker, John W. Belsher and Gregory A. Connell, for Plaintiffs and Appellants.

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